

this section, A is deemed to have acted reasonably and in good faith because A requested relief before the failure to make the regulatory election was discovered by the IRS.

*Example 2. Reliance on qualified tax professional.* Taxpayer B hires a qualified tax professional to advise B on preparing B's 1997 income tax return. The professional was competent to render advice on the election and B provided the professional with all the relevant facts. The professional fails to advise B that a regulatory election is necessary in order for B to report income on B's 1997 return in a particular manner. Nevertheless, B reports this income in a manner that is consistent with having made the election. In 2000, during the examination of the 1997 return by the IRS, the examining agent discovers that the election has not been filed. B promptly files for relief in accordance with this section, including attaching an affidavit from B's professional stating that the professional failed to advise B that the election was necessary. Assume paragraphs (b)(3) (i) through (iii) of this section do not apply. Under paragraph (b)(1)(v) of this section, B is deemed to have acted reasonably and in good faith because B reasonably relied on a qualified tax professional and the tax professional failed to advise B to make the election.

*Example 3. Accuracy-related penalty.* Taxpayer C reports income on its 1997 income tax return in a manner that is contrary to a regulatory provision. In 2000, during the examination of the 1997 return, the IRS raises an issue regarding the reporting of this income on C's return and asserts the accuracy-related penalty under section 6662. C requests relief under this section to elect an alternative method of reporting the income. Under paragraph (b)(3)(i) of this section, C is deemed to have not acted reasonably and in good faith because C seeks to alter a return position for which an accuracy-related penalty could be imposed under section 6662.

*Example 4. Election not requiring adjustment under section 481(a).* Taxpayer D prepares D's 1997 income tax return. D is unaware that a particular accounting method regulatory election is available. D files D's 1997 return without making the election and uses another permissible method of accounting. The applicable regulation provides that the election is made on a cut-off basis (without an adjustment under section 481(a)). In 1998, D requests relief under this section to make the election under the regulation. If D were

granted an extension of time to make the election, D would pay no less tax than if the election had been timely made. Assume that paragraphs (c)(2) (i), (iii), and (iv) of this section do not apply. Under paragraph (c)(2)(ii) of this section, the interests of the Government are not deemed to be prejudiced because the election does not require an adjustment under section 481(a).

*Example 5. Election requiring adjustment under section 481(a).* The facts are the same as in Example 4 of this paragraph (f) except that the applicable regulation provides that the election requires an adjustment under section 481(a). Under paragraph (c)(2)(ii) of this section, the interests of the Government are deemed to be prejudiced except in unusual or compelling circumstances.

*Example 6. Under examination by the IRS.* A regulation permits an automatic change in method of accounting for an item on a cut-off basis. Taxpayer E reports income on E's 1997 income tax return using an impermissible method of accounting for the item. In 2000, during the examination of the 1997 return by the IRS, the examining agent notifies E in writing that its method of accounting for the item is an issue under consideration. Any change from the impermissible method made as part of an examination is made with an adjustment under section 481(a). E requests relief under this section to make the change pursuant to the regulation for 1997. The change on a cut-off basis under the regulation would be more favorable than if the change were made with an adjustment under section 481(a) as part of an examination. Under paragraph (c)(2)(iii) of this section, the interests of the Government are deemed to be prejudiced except in unusual and compelling circumstances because E seeks to change from an impermissible method of accounting that is an issue under consideration in the examination on a basis that is more favorable than if the change were made as part of an examination.

[T.D. 8742, 62 FR 68171, Dec. 31, 1997]

**§ 301.9100-4T Time and manner of making certain elections under the Economic Recovery Tax Act of 1981.**

(a) *Miscellaneous elections—(1) Elections to which this paragraph applies.* This paragraph applies to the following elections provided under the Economic Recovery Tax Act of 1981:

Section of Act	Section of code	Description of election	Availability of election
201(a) ...	168(b)(3) .....	Different recovery period .....	Property placed in service after 1980.
201(a) ...	168(d)(2)(A) .....	Inclusion in income of entire proceeds of disposition.	Property placed in service after 1980.
201(a) ...	168(e)(2) .....	Exclusion of property from recovery system ..	Property placed in service after 1980.
201(a) ...	168(f)(2)(C) .....	Different recovery period for property used outside U.S..	Property placed in service after 1980.

Section of Act	Section of code	Description of election	Availability of election
202(a) ... 237 .....	179 ..... 474 .....	Expensing certain depreciable property ..... For small business to use one inventory pool when LIFO is elected.	Taxable years beginning after 1981. Taxable years beginning after 1981.
266(a) ...	.....	Deferral of commencement of amortization period for motor carrier operating authority.	Taxable years ending after June 30, 1980.
508(c) ...	.....	Application of title V of the Act to all regulated futures contracts or positions held on June 23, 1981.	Property held on June 23, 1981.
509 .....	.....	Application of Code sec. 1256 and extension of time for payment of tax for all regulated futures contracts held at any time during taxable year that includes June 23, 1981.	Property held during taxable year that includes June 23, 1981.

(2) *Time for making elections*—(i) *In general.* Except as otherwise provided in this paragraph (a)(2), the elections specified in paragraph (a)(1) of this section shall be made by the later of—

(A) The due date (taking extensions into account) of the income tax return for the taxable year for which the election is to be effective, or

(B) April 15, 1982.

(ii) *No extension of time for payment.* Payments of tax due shall be made in accordance with chapter 62 of the Code.

(iii) *Elections under section 508(c) or 509 of the Act.* Elections under section 508(c) or 509 of the Act shall be made by the due date (taking extensions into account) of the income tax return for the taxable year for which the election is to be effective.

(3) *Manner of making elections.* The elections specified in paragraph (a)(1) of this section shall be made by attaching a statement to the income tax return (or amended return) for the taxable year for which the election is made. Except as otherwise provided in the return or in the instructions accompanying the return for the taxable year, the statement shall—

(i) Contain the name, address, and taxpayer identification number of the electing taxpayer,

(ii) Identify the election,

(iii) Indicate the section of the Code (or, if the provision is not codified, the section of the Act) under which the election is being made,

(iv) Specify the period for which the election is being made and the property to which the election is to apply, and

(v) Provide any information required by the relevant statutory provisions and any information necessary to show

that the taxpayer is entitled to make the election.

(b) *Designation of principal campaign committee.* This paragraph applies to the designation of a principal campaign committee under section 527(h) of the Code, as added by section 128 of the Act. References in this section to “elections” include designations under section 527(h). Under that provision a candidate for Congress may designate one committee as the candidate’s principal campaign committee. The political organization taxable income of that committee shall be taxed at the appropriate rates under section 11(b); that income is ordinarily taxed at the highest rate specified in section 11(b). The candidate shall designate the principal campaign committee by filing a statement of designation with the income tax return of the committee for the first taxable year of the committee ending after 1981 for which the designation is to be effective. The return and the statement shall be filed by the due date (taking extensions into account) of the return. The rules of section 21 (relating to effects of changes in rates during a taxable year) shall apply in the case of any taxable year beginning before 1982 for which a designation is made. The statement of designation shall be signed by the candidate and shall—

(1) Contain the name, address, and taxpayer identification number of the candidate and of the committee,

(2) Identify the statement as a designation under section 527(h) of the Code, and

(3) Designate the committee as the principal campaign committee of the candidate.

The candidate shall attach to the statement a copy of the statement of designation filed with the Federal Election Commission.

(c) *Election to be treated as a qualified fund for purposes of the research credit.* This paragraph applies to the election provided under section 44F(e)(4) of the Code, as added by section 221(a) of the Act. The election to be treated as a qualified fund for purposes of the research credit may be made effective as of any date after June 30, 1981, and before January 1, 1986. An organization shall make this election by filing with the service center with which it files its annual return a statement signed by a person authorized to act on behalf of the organization. That statement shall—

(1) Contain the name, address, and taxpayer identification number of the electing organization and of the organization that established and maintains the electing organization,

(2) Identify the election as an election under section 44F(e)(4) of the Code,

(3) Specify the date on which the election is to become effective (in the case of elections filed before February 1, 1982, not earlier than the date that is 7 months before the date on which the election is filed; in the case of elections filed after January 31, 1982, not earlier than the date on which the election is filed), and

(4) Provide all information necessary to show that the organization is entitled to make the election.

(d) *Election to treat qualified subchapter S trust as grantor trust.* This paragraph applies to the election provided under section 1371(g)(2) of the Code, as added by section 234(b) of the Act. The election to treat a qualified subchapter S trust as a grantor trust described in section 1371(e)(1)(A) of the Code is available for taxable years beginning after 1981. The beneficiary of the trust (or the legal representative of the beneficiary) shall make this election by signing and filing with the service center with which the subchapter S corporation files its income tax return a statement that—

(1) Contains the name, address, and taxpayer identification number of the beneficiary, the trust, and the subchapter S corporation,

(2) Identifies the election as an election under section 1371(g)(2) of the Code,

(3) Specifies the date on which the election is to become effective (not earlier than 60 days before the date on which the election is filed), and

(4) Provides all information necessary to show that the beneficiary is entitled to make the election.

Note that this election does not itself constitute an election as to the status of the corporation; the corporation must make the election provided in section 1372(a) to be treated as an electing small business corporation.

(e) *Election to have Code section 422A apply to options granted before 1981.* This paragraph applies to the election provided under section 251(c)(1)(B) of the Act to have Code section 422A apply to certain options granted before 1981. A corporation may make only one election under this provision. Thus, a corporation that makes an election under this provision with respect to certain options granted before 1981 may not make any subsequent election under this provision with respect to other options granted before 1981. An election under this provision shall be made no later than the due date (taking extensions into account) of the income tax return of the corporation for its first taxable year during which either an option subject to the election or an option subject to the rules of section 422A of the Code is exercised. In any event, no election under this provision will be permitted after the due date (taking extensions into account) of the income tax return for the taxable year including December 31, 1982. A corporation shall make this election by attaching to its income tax return (or amended return) a statement that—

(1) Contains the name, address, and taxpayer identification number of the corporation,

(2) Identifies the election as an election under section 251(c)(1)(B) of the Economic Recovery Tax Act of 1981,

(3) Specifies the options to which the election applies, and

(4) Provides all information necessary to show that the corporation is entitled to make the election.

(f) *Election to increase basis of property on which additional estate tax is imposed.*

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This paragraph applies to the election provided under section 1016(c) of the Code, as amended by section 421(g) of the Act. The election to increase the basis of property on which additional estate tax is imposed is available with respect to the estates of decedents dying after 1981. The qualified heir shall make this election by filing with the Form 706-A (Additional Estate Tax Return) a statement that—

- (1) Contains the name, address, and taxpayer identification number of the qualified heir and of the estate,
- (2) Identifies the election as an election under section 1016(c) of the Code,
- (3) Specifies the property with respect to which the election is made, and
- (4) Provides any additional information required by the instructions accompanying Form 706-A.

A qualified heir making an election under this paragraph must pay interest on the additional estate tax from the date that is 9 months after the date of the decedent's death to the date of the payment of the additional estate tax.

(g) *Revocation of elections.* Elections under paragraph (f) of this section are irrevocable. Other elections made under this section may be revoked only with the consent of the Commissioner. An application for consent to revoke an election shall be signed by the applicant and filed with the service center with which the election was filed and shall—

- (1) Contain the name, address, and taxpayer identification number of all parties identified in connection with the election,
- (2) Identify the election being revoked by reference to the section of the Code or Act under which the election was made,
- (3) Specify the scope of the election, and
- (4) Explain why the applicant seeks to revoke the election.

(h) *Additional information required.* If later regulations issued under the section of the Code or Act under which the election was made require the furnishing of information in addition to that which was furnished with the statement of election and an office of the Internal Revenue Service requests the taxpayer to provide the additional

information, the taxpayer shall furnish the additional information in a statement filed with that office of the Internal Revenue Service within 60 days after the request is made. This statement shall also—

- (1) Contain the name, address, and taxpayer identification numbers of all parties identified in connection with the election,
- (2) Identify the election by reference to the section of the Code or Act under which the election was made, and
- (3) Specify the scope of the election.

If the additional information is not provided within 60 days after the request is made, the election may, at the discretion of the Commissioner, be held invalid.

(i) *Effective date.* This section applies to elections made after August 12, 1981.

[T.D. 7793, 46 FR 54538, Nov. 3, 1981. Redesignated by T.D. 8435, 57 FR 43895, Sept. 23, 1992. Amended by T.D. 9481, 75 FR 17857, Apr. 8, 2010]

**§ 301.9100-5T Time and manner of making certain elections under the Tax Equity and Fiscal Responsibility Act of 1982.**

(a) *Miscellaneous elections—*(1) *Elections to which this paragraph applies.* This paragraph applies to the following elections provided under the Tax Equity and Fiscal Responsibility Act of 1982.

Section of act	Section of code	Description of election	Availability of election
201(c) ...	58(i)(1)	Optional 10-year write off of certain tax preferences.	Taxable years beginning after Dec. 31, 1982.
201(c)(1)	58(i)(4)	Intangible drilling and development costs.	Taxable years beginning after Dec. 31, 1982.
205(a) ...	48(q) ..	Reduced investment credit in lieu of basis adjustment.	Generally to period beginning after Dec. 31, 1982.
256(f) ....	820 .....	Insurance company revocation of election under section 820.	Contracts which took effect in 1980 or 1981.

(2) *Time for making elections—*(i) *In general.* Except as otherwise provided in paragraph (a)(2) of this section, the elections specified in paragraph (a)(1) of this section shall be made by the later of—

(A) The due date (taking extensions into account) of the income tax return